

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN BROADCASTING COMPANIES, INC., DISNEY ENTERPRISES, INC., TWENTIETH CENTURY FOX FILM CORPORATION, CBS BROADCASTING INC., CBS STUDIOS INC., FOX TELEVISION STATIONS, LLC, FOX BROADCASTING COMPANY, LLC, NBCUNIVERSAL MEDIA, LLC, UNIVERSAL TELEVISION LLC, and OPEN 4 BUSINESS PRODUCTIONS, LLC,

Plaintiffs and Counterclaim-Defendants,

v.

DAVID R. GOODFRIEND and SPORTS FANS COALITION NY, INC.,

Defendants and Counterclaim-Plaintiffs.

Case No.: 19-cv-7136-LLS

**DECLARATION OF LAURA B. NAJEMY
IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

I, Laura B. Najemy, make this declaration pursuant to 28 U.S.C. § 1746. I hereby state as follows:

1. I am an associate with the law firm of Orrick Herrington & Sutcliffe LLP and counsel of record for Defendants David R. Goodfriend and Sports Fans Coalition NY, Inc. (“Defendants”) in the above-captioned matter. I am a member of good standing of the Bar of the Commonwealth of Massachusetts and am admitted *pro hac vice* to practice before this Court. I base this declaration on my personal knowledge and, if called as a witness, I could and would testify competently thereto.

2. Attached hereto as **Exhibit 1** is a true and correct copy of the February 18, 2021 Expert Report of Andrew Jay Schwartzman.

3. Attached hereto as **Exhibit 2** is a true and correct copy of the March 18, 2021 Rebuttal Expert Report of Andrew Jay Schwartzman.

4. Attached hereto as **Exhibit 3** is a true and correct copy of the February 18, 2021 Expert Report of Jeffrey A. Eisenach.

5. Attached hereto as **Exhibit 4** is a true and correct copy of the March 18, 2021 Rebuttal Expert Report of Jeffrey A. Eisenach.

6. Attached hereto as **Exhibit 5** is a true and correct copy of the February 18, 2021 Expert Report of Thomas J. Raffa.

7. Attached hereto as **Exhibit 6** is a true and correct copy of the March 18, 2021 Rebuttal Expert Report of Thomas J. Raffa.

8. Attached hereto as **Exhibit 7** is a true and correct copy of the February 18, 2021 Expert Report of Jack N. Goodman.

9. Attached hereto as **Exhibit 8** is a true and correct copy of the March 18, 2021 Rebuttal Expert Report of Jack N. Goodman.

10. Attached hereto as **Exhibit 9** is a true and correct copy of the February 18, 2021 Expert Report of Paul Horowitz.

11. Attached hereto as **Exhibit 10** is a true and correct copy of the March 18, 2021 Rebuttal Expert Report of Paul Horowitz.

12. Attached hereto as **Exhibit 11** is a true and correct copy of the February 18, 2021 Expert Report of Gregory J. Nachtwey.

13. Attached hereto as **Exhibit 12** is a true and correct copy of the February 18, 2021 Expert Report of Ian Foster.

14. Attached hereto as **Exhibit 13** is a true and correct copy of the February 18, 2021 Expert Report of Nigel Jones.

15. Attached hereto as **Exhibit 14** is a true and correct copy of excerpts from the transcript of the November 16, 2020 Deposition of Lew Leone.

16. Attached hereto as **Exhibit 15** is a true and correct copy of excerpts from the transcript of the December 1, 2020 Deposition of John Orlando.

17. Attached hereto as **Exhibit 16** is a true and correct copy of excerpts from the transcript of the December 4, 2020 Deposition of Jeffrey Morris.

18. Attached hereto as **Exhibit 17** is a true and correct copy of excerpts from the transcript of the December 10, 2020 Deposition of Peter O'Connell.

19. Attached hereto as **Exhibit 18** is a true and correct copy of excerpts from the transcript of the April 22, 2021 Deposition of Robert Corn-Revere.

20. Attached hereto as **Exhibit 19** is a true and correct copy of excerpts from the transcript of the April 13, 2021 Deposition of Jack N. Goodman.

21. Attached hereto as **Exhibit 20** is a true and correct copy of excerpts from the transcript of the April 12, 2021 Deposition of Gregory J. Nachtwey.

22. Attached hereto as **Exhibit 21** is a true and correct copy of excerpts from the transcript of the April 8, 2021 Deposition of Jeffrey A. Eisenach.

23. Attached hereto as **Exhibit 22** is a true and correct copy of excerpts from the transcript of the November 19, 2020 Deposition of James Scott Landers.

24. Attached hereto as **Exhibit 23** is a true and correct copy of excerpts from the transcript of the December 18, 2020 Deposition of David R. Goodfriend.

25. Attached hereto as **Exhibit 24** is a true and correct copy of excerpts from the transcript of the December 3, 2020 Deposition of Michael Kelly.

26. Attached hereto as **Exhibit 25** is a true and correct copy of excerpts from the transcript of the December 15, 2020 Deposition of Jeff Blum.

27. Attached hereto as **Exhibit 26** is a true and correct copy of excerpts from the transcript of the December 15, 2021 Deposition of Thomas J. Tyrer.

28. Attached hereto as **Exhibit 27** is a true and correct copy of excerpts from the transcript of the December 16, 2020 Deposition of Stephen Ross.

29. Attached hereto as **Exhibit 28** is a true and correct copy of excerpts from the transcript of the April 23, 2021 Deposition of Andrew Jay Schwartzman.

30. Attached hereto as **Exhibit 29** is a true and correct copy of excerpts from the transcript of the April 23, 2021 Deposition of Thomas J. Raffa.

31. Attached hereto as **Exhibit 30** is a true and correct copy of excerpts from Plaintiffs' Responses and Objections to Defendants' First and Second Sets of Interrogatories.

32. Attached hereto as **Exhibit 31** is a true and correct copy of a spreadsheet comprised of testimonials submitted by Locast users describing why they use the Locast service.

33. Attached hereto as **Exhibit 32** is a true and correct copy of a spreadsheet comprised of testimonials submitted by Locast users requesting 30 day interruption-free service.

34. Attached hereto as **Exhibit 33** is a true and correct copy of SFCNY's Form CHAR410, "Registration Statement for Charitable Organizations."

35. Attached hereto as **Exhibit 34** is a true and correct copy of a July 15, 2019 Press Release, “Scalise, Eshoo Introduce Modern Television Act of 2019” (last visited May 4, 2021), <https://scalise.house.gov/media/press-releases/scalise-eshoo-introduce-modern-television-act-2019>.

36. Attached hereto as **Exhibit 35** is a true and correct copy of Locast’s program guide (last visited May 3, 2021), <https://www.locast.org/cities/506>.

37. Attached hereto as **Exhibit 36** is a true and correct copy of SFCNY’s April 5, 2018 Form 1023, applying for recognition of exemption under § 501(c)(3) of the Internal Revenue Code.

38. Attached hereto as **Exhibit 37** is a true and correct copy of the December 3, 2018 Internal Revenue Service’s tax determination confirming SFCNY’s tax exemption under § 501(c)(3) of the Internal Revenue Code.

39. Attached hereto as **Exhibit 38** is a true and correct copy of SFCNY’s New York state form CHAR500 and federal Form 990 for the 2019 year.

40. Attached hereto as **Exhibit 39** is a true and correct copy of SFCNY’s federal Form 990-EZ for the 2018 year.

41. Attached hereto as **Exhibit 40** is a true and correct copy of SFCNY’s New York state 2018 CHAR500.

42. Attached hereto as **Exhibit 41** is a true and correct copy of “About Locast” (last visited May 4, 2021), <https://www.locast.org/news/about>.

43. Attached hereto as **Exhibit 42** is a true and correct copy of the Electronic Frontier Foundation’s website profile page for “Gigi Sohn” (last visited May 4, 2021), <https://www.eff.org/about/staff/gigi-sohn>.

44. Attached hereto as **Exhibit 43** is a true and correct copy of the Public Knowledge homepage (last visited May 4, 2021), <https://www.publicknowledge.org/>.

45. Attached hereto as **Exhibit 44** is a true and correct copy of the “About” page of Habiba Alcindor’s website (last accessed May 4, 2021), <https://habiba-alcindor.com/>.

46. Attached hereto as **Exhibit 45** is a true and correct copy of Habiba Alcindor’s page on The Nation’s website (last accessed May 4, 2021), <https://www.thenation.com/authors/habiba-alcindor/>.

47. Attached hereto as **Exhibit 46** is a true and correct copy of GRF CPAs & Advisors’ Independent Auditor’s Report for the Year Ending December 31, 2020.

48. Attached hereto as **Exhibit 47** is a true and correct copy of GRF CPAs & Advisors’ Independent Auditor’s Report for the Year Ending December 31, 2019.

49. Attached hereto as **Exhibit 48** is a true and correct copy of SFNCY’s Pledge Acknowledgment Letter to AT&T.

50. Attached hereto as **Exhibit 49** is a true and correct copy of SFCNY’s Pledge Acknowledgment Letter to PALO.

51. Attached hereto as **Exhibit 50** is a true and correct copy of Donation Agreement between Liberty Cablevision of Puerto Rico and SFCNY.

52. Attached hereto as **Exhibit 51** is a true and correct copy of an email from Charlie Ergen to David Goodfriend dated January 12, 2018, which is bates stamped SFCNY-000040431.

53. Attached hereto as **Exhibit 52** is a true and correct copy of an email from Michael Kelly to Daniel York at AT&T dated September 21, 2018, which is bates stamped SFCNY-000012857.

54. Attached hereto as **Exhibit 53** is a true and correct copy of a January 2018 Locast Press Release, which is bates stamped SFCNY-000052391.

55. Attached hereto as **Exhibit 54** is a true and correct copy of a February 2018 Locast Press Release, which is bates stamped SFCNY-000057297.

56. Attached hereto as **Exhibit 55** is a true and correct copy of Mike Farrell, “Kagan: Retrans Fights Could Be Fewer in 2021” (last accessed May 4, 2021), available at <https://www.nexttv.com/blogs/kagan-retrans-fights-could-be-fewer-in-2021>.

57. Attached hereto as **Exhibit 56** is a true and correct copy of Akron Beacon Journal, “Locast, streaming service for cord cutters seeking local TV, launches in Northeast Ohio” (last accessed May 4, 2021), available at <https://www.beaconjournal.com/story/news/technology/2021/03/09/locast-low-cost-service-cord-cutters-launching-locally-wednesday/6924379002/>.

58. Attached hereto as **Exhibit 57** is a true and correct copy of Ricochet, “Locast: The Cord Cutter’s Friend” (last accessed May 4, 2021), available at <https://ricochet.com/916391/locast-the-cord-cutters-friend/>.

59. Attached hereto as **Exhibit 58** is a true and correct copy of Jared Newman, TechHive, “For local NFL streams, Locast is a cord-cutter’s secret weapon” (last accessed May 4, 2021), available at <https://www.techhive.com/article/3573753/for-local-nfl-streams-locast-is-a-cord-cutters-secret-weapon.html>.

60. Attached hereto as **Exhibit 59** is a true and correct copy of Cord Cutter News, “How to watch local channels without cable in 2020” (last accessed May 4, 2021), available at <https://www.cordcuttersnews.com/how-to-watch-local-channels/>.

61. Attached hereto as **Exhibit 60** is a true and correct copy of Nicole Nguyen, The Wall Street Journal, “Streaming vs. Cable: How to Save Money Watching Live TV” (last accessed May 4, 2021), available at <https://www.wsj.com/articles/streaming-vs-cable-how-to-save-money-watching-live-tv-11612101600>.

62. Attached hereto as **Exhibit 61** is a true and correct copy of NBC Right Now, “The Cord Cutter’s Guide to Watching Broadcast TV for Free” (last accessed May 4, 2021), available at https://www.nbcrightnow.com/lifestyles/entertainment/the-cord-cutter-s-guide-to-watching-broadcast-tv-for-free/article_def30577-8bae-59bc-a319-cf93e4266c7d.html.

63. Attached hereto as **Exhibit 62** is a true and correct copy of Texas Sports Nation, “On TV/Radio: Locast founder says AT&T vs. KHOU dispute another reason to cut the cord” (last accessed May 4, 2021), available at <https://www.houstonchronicle.com/texas-sports-nation/texans/article/Locast-KHOU-Tegna-AT-T-retransmission-dispute-15777033.php>.

64. Attached hereto as **Exhibit 63** is a true and correct copy of Daniel Frankel, Next TV “Locast’s Goodfriend on Station Blackouts: ‘Forget DirecTV, Forget Dish’” (last accessed May 4, 2021), available at <https://www.nexttv.com/news/locasts-goodfriend-on-station-blackouts-forget-directv-forget-dish>.

65. Attached hereto as **Exhibit 64** is a true and correct copy of the Loan Agreement between IoT Broadband and SFCNY, which is bates stamped SFCNY-000085810.

66. Attached hereto as **Exhibit 65** is a true and correct copy of a payment statement regarding the payoff of the IoT Broadband loan, which is bates stamped SFCNY-000086234.

67. Attached hereto as **Exhibit 66** is a true and correct copy of AT&T’s Customer Support webpage titled “How to keep up with missing shows or channels” (last accessed on May 6, 2021), available at <https://www.att.com/support/article/u-verse-tv/KM1421720>.

68. Attached hereto as **Exhibit 67** is a true and correct copy of SFCNY's January-December 2020 Profit and Loss Statement, which is bates stamped SFCNY-000096361.

69. Attached hereto as **Exhibit 68** is a true and correct copy of SFCNY's July 2020 Management Report, which is bates stamped SFCNY-000096410.

70. Attached hereto as **Exhibit 69** is a true and correct copy of SFCNY's August 2020 Management Report, which is bates stamped SFCNY-000096366.

71. Attached hereto as **Exhibit 70** is a true and correct copy of SFCNY's September 2020 Management Report, which is bates stamped SFCNY-000096388.

72. Attached hereto as **Exhibit 71** is a true and correct copy of SFCNY's October 2020 Management Report, which is bates stamped SFCNY-96377.

73. Attached hereto as **Exhibit 72** is a true and correct copy of SFCNY's November 2020 Management Report, which is bates stamped SFCNY-000096421.

74. Attached hereto as **Exhibit 73** is a true and correct copy of SFCNY's December 2020 Management Report, which is bates stamped SFCNY-000096399.

75. Attached hereto as **Exhibit 74** is a true and correct copy of a March 21, 2020 Locast Donor Report, which is bates stamped SFCNY-000074267.

76. Attached hereto as **Exhibit 75** is a true and correct copy of a February 11, 2020 Locast Donor Report, which is bates stamped SFCNY-000076062.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 6, 2021
Needham, Massachusetts

/s/ Laura B. Najemy
Laura B. Najemy